



Secretary of the Air Force  
Office of Legislative Liaison

## CONGRESSIONAL HEARING RESUME

106th Congress \* Second Session\*

Date: 30 Mar 00

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**SUBJECT: H.R. 3380 Military Extraterritorial Jurisdiction Act**

**COMMITTEE: Crime Subcommittee, House Judiciary Committee**

**CHAIRMAN: Steve Chabot (OH), Acting**

**MEMBERS (PRESENT INDICATED WITH \*)**

**Republicans**

Bill McCollum (FL) Ch.

Steve Chabot (OH)\*

Bob Barr (GA)

George Gekas (PA)

Howard Coble (NC)

Lamar Smith (TX)

Charles Canady (FL)

Asa Hutchinson (AR)

**Democrats**

Robert C. Scott (VA)\* Ranking

Martin Meehan (MA)

Steven Rothman (NJ)

Anthony Weiner (NY)

Sheila Jackson Lee (TX)

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**Prepared by: Col. Doug Acklin**

**Date: 30 Mar 00**

**Ext: 693-9109**

## **WITNESSES**

1. Robert Reed, Assistant General Counsel, OSD/GC
2. BG Joseph R. Barnes, Office of the Judge Advocate General, U.S. Army
3. Brig Gen James B. Smith, Commander, 18<sup>th</sup> Fighter Wing, Kadena AFB, Japan
4. Roger Pauley, Director of Legislation, United States Department of Justice
5. Jan Mohr, President, Federal Education Association, Washington, D.C.

**EXECUTIVE SUMMARY:** Rep Chabot chaired the meeting on behalf of Rep McCollum since the full Judiciary Committee was also in session. The hearing was generally friendly with all of the witnesses stating support of HR 3380 in order to close a critical gap in criminal jurisdiction over felony offenses committed by persons employed by or accompanying the Armed Forces, outside of the U.S. Witnesses provided history and background of extraterritorial crimes now in effect, such as espionage. Currently with over 225,000 contractors and dependents accompanying the force, foreign governments are often hesitant to prosecute American-on-American crimes. Brig Gen James Smith, Kadena AB Wing CC, gave a very good commander's perspective on the small number of serious cases such as sexual assault or embezzlement where the Japanese government would not assume jurisdiction and prosecute. He talked about the effects on morale and discipline in the overseas community and gave good examples of how the legislation would be a valuable tool. The Federal Education Association raised concerns how pre-trial detention, hearings, rights to counsel and other issues would be handled. Rep Scott asked a number of questions aimed at whether the bill would leave overseas civilians with less in the way of constitutional rights than they would enjoy if charged or arrested back in the US. Chairman Chabot voiced appreciation for all of the witnesses and thanked Brig Gen Smith for traveling so far to provide important testimony.

### **The hearing convened at 1435 Hrs**

**Opening Remarks from Rep. Chabot:** Spoke on behalf of Chairman McCollum stating the number of civilians accompanying the force has dramatically increased - over 96,000 civilian employees and contractors alone, with the total rising to almost 300,000 when family members are added. The legislation would close a gaping hole in the law.

**Opening Remarks from Rep. Scott:** Stated many serious crimes committed by Americans outside of the U.S. are not being prosecuted and civilians accompanying the Armed Forces must be no less accountable than if back home. He indicated that just because the accused is not in the United States, there should be no less due process and fairness applied.

### **Highlights from Witness Statements:**

**Mr. Reed:** DOD strongly supports HR 3380. The Overseas Jurisdiction Advisory Committee concluded there was a significant lack of jurisdiction over those DOD civilians and contractors who deploy with the Armed Forces during contingency operations, such as in the Balkans. Also, Federal civilian criminal law does not comprehensively address criminal activity engaged in by civilians who accompany forces overseas.

**BG Barnes:** Pointed out the right to exercise jurisdiction and prosecute a civilian accompanying the force is governed by international agreements, such as a Status of Forces Agreements (SOFA). HR 3380 addresses the gap when the Host Nation refuses to prosecute. He described that while there is a SOFA arrangement in the Balkan countries stemming from the Dayton Accords framework, if the offender is a civilian employee or contractor, the Task Force Commander is powerless to ensure that the misconduct is addressed. The Commander's only option is to impose limited administrative punishments.

**Brig Gen Smith:** He pointed out that this is not an epidemic problem and serious crimes involving civilians, contractors, and dependents were less than 1% of the total and in Japan were less than civilian population rates offbase. He stated the base community had a very strong administrative program to get parents involved with juvenile troublemakers. He indicated his dismay with situations such as when he had barred a dependent from the base and could not later prosecute the young man's downtown car burglaries. When the Japanese refused to charge him, the young man told General Smith, "you can't touch me." BG Smith said this legislation would give the Commander an important tool that would have a powerful deterrent effect. "Embezzlers and child molesters should have their day in court."

**Mr. Roger Pauley:** Provided background on how other extraterritorial crimes have been handled overseas and affirmed the Department of Justice's strong support of the measure.

**Ms. Jan Mohr:** She stated the Federal Education Association (FEA) represents over 6,000 American teachers and support personnel in Department of Defense Schools. She pointed out the legislation was needed, would protect teachers overseas from becoming potential victims, and was pleased the Senate Bill provisions subjecting civilians to courts-martial jurisdiction was not part of 3380. However, the FEA feels this bill lacks protections to ensure against the infringement of educator's rights - particularly during an investigation and during pre-trial arrest and detention. She said a timely bail hearing was essential, and seizing a teacher's passport was tantamount to detention. Since few civilians can fly a lawyer overseas, will the local military defense counsel or a federal defender be appointed? Further, unfounded allegations such as child abuse might not provide a chance for the accused teacher or administrator to clear themselves locally, as opposed to being forcibly removed to the U.S. for their first hearing.

### **Questions from the Members:**

**Rep. Chabot:** In response to how many people escape justice each year, Mr. Reed told him the recent DOD IG report on this showed that of 275 investigations, only 8% of those were disposed of by the Host Country. Mr. Chabot asked if the act was consistent with the NATO SOFA and would apply to the Balkans? BG Barnes stated it would be fully consistent with the SOFA and concurrent jurisdiction concepts. It would aide jurisdiction problems in the Balkans. Mr. Chabot was also told that DOJ and DOD have no significant disagreements on how the legislation is written or what its impact would be. Mr. Chabot asked if the Attorney General could prosecute separately, even if the Host Nation has taken action? Mr. Pauley replied this would not usually happen, but would not be double jeopardy under the concept of separate sovereigns taking action for different purposes. Ms. Mohr told him the legislation could discourage some teachers from taking jobs overseas if it was implemented poorly and was perceived to not provide adequate protection from false allegations such as child abuse.

**Rep. Scott:** Asked how many additional cases a year would the legislation generate? Mr. Reed pointed out only felony cases where the offense carried a year of confinement or more would be pursued. The total would be very small, probably only a dozen or more cases per year. In response to whether drug cases or simple possession of cocaine would meet this standard, Mr. Reed pointed out the act would apply, but that most such cases are usually handled now by the Host Nation. Mr. Scott asked if the extraterritorial jurisdiction applied when a person accompanying the force in Japan, went to another foreign country and committed a crime? Mr. Reed stated it would depend on the circumstances, but there would need to be a nexus between the crime and the aspect of the perpetrator accompanying or being employed by the force. Mr. Scott asked if the legislation was intended to cover juveniles? Mr. Pauley stated there could be circumstances where older juveniles who committed serious offenses could be tried as adults. Mr. Scott replied the issue of juvenile coverage should be fully decided in advance. Mr. Scott said he was concerned about who conducts arrests and the process involved. Mr. Pauley stated DOD could conduct arrests based on probable cause. Off base DOD law enforcement, would follow the lead of host nation police liaisons. This resulted in a discussion of whether arrested Americans would enjoy Miranda warnings and other due process rights. Both Mr. Pauley and BG Barnes reported there are circumstances now when Americans are arrested overseas by foreign police and do not receive U.S. constitutional protections. Mr. Scott wanted to know when do you get a bail hearing? Mr. Pauley pointed out that in most extraterritorial crimes, the first bail hearing is in the United States. He talked about Coast Guard arrests on the high seas and the first magistrate's appearance in the U.S. Rep. Scott was critical of how this would work and the implications in a false allegation situation. He also stated he had concerns over how do you confront overseas witnesses and get access to crime scene evidence when you are detained back in the United States? Mr. Pauley discussed these were not extradition hearings and that DOJ had not been providing overseas magistrates for initial Rule 5 hearings. This could be done, but at considerable cost. Brig Gen Barnes stated it is always in our interest to maximize U.S. jurisdiction. It would not be in DOD's interest to indefinitely detain anyone and a habeas corpus writ would cause a hearing to be held. Mr. Scott indicated DOJ and DOD would have to implement workable regulations to insure American's due process rights were adjudicated as fairly as possible.

**The hearing adjourned at 1600 hrs.**